

The Honorable Barbara Linde

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN THE COUNTY OF KING

RONALD WASTEWATER DISTRICT and
ARTHUR WADEKAMPER,

Plaintiffs,

v.

CITY OF SHORELINE, a Washington municipal
corporation,

Defendant.

NO. 13-2-24208-7SEA

ANSWER AND
COUNTERCLAIMS OF
DEFENDANT

I. ANSWER

The City of Shoreline answers the Complaint of Plaintiffs, Ronald Wastewater District (hereafter "District") and Arthur Wadekamper, as follows:

1.1. Shoreline admits that the District is a sewer district with its principal place of business at 17505 Linden Avenue North within the City of Shoreline. Shoreline lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in paragraph 1.1, which are therefore denied.

1.2. Shoreline admits that plaintiff Arthur Wadekamper is a Commissioner and the current President of the Board of Commissioners of the District. Shoreline lacks

1 sufficient information to form a belief as to the truth or falsity of the remaining allegations
2 in paragraph 1.2, which are therefore denied.

3 1.3. Shoreline admits paragraph 1.3 of the Complaint.

4 2.1. Shoreline admits the allegation that the parties reside or do business within
5 King County, Washington. The remaining allegations in paragraph 2.1 are denied.
6

7 2.2. Shoreline admits paragraph 2.2.

8 3.1. Shoreline admits that the District was formed in 1951, and that the District
9 currently provides sewer service to areas within the City of Shoreline, portions of the
10 Town of Woodway, and portions of unincorporated Snohomish County, specifically, the
11 “Point Wells” area. Shoreline lacks sufficient information to form a belief as to the truth
12 or falsity of the remaining allegations in paragraph 3.1 of the Complaint, which are
13 therefore denied.
14

15 3.2. Shoreline admits that the City of Shoreline incorporated in 1995 following a
16 public vote, and that the City is organized as a non-charter code city operating under Title
17 35A RCW and other applicable Washington statutes.

18 3.3. The allegations of paragraph 3.3 are denied. The City of Shoreline owns and
19 operates a “system of sewerage,” as that term is defined in RCW 35.92.020 and RCW
20 35.67.010, and has owned and operated its system of sewerage continuously since the
21 City’s incorporation in 1995.
22

23 3.4. In answer to paragraph 3.4, RCW 35.92.070 speaks for itself and no further
24 answer is required.
25

1 3.5. Shoreline admits that an Interlocal Operating Agreement (“IOA”) between
2 the City and the District exists, that the IOA has an effective date of October 22, 2002,
3 and that a copy of the IOA is attached as Exhibit 1 to the Complaint. The remaining
4 allegations of paragraph 3.5 are denied. The District's counsel drafted the IOA, not the
5 City, and the IOA was entered into pursuant to RCW 39.34 and RCW 35.13A.070, not
6 RCW 35.17A.070 as the Complaint alleges.

8 3.6. The recitals of the IOA speak for themselves, and no further answer to the
9 allegations of paragraph 3.6 is required.

10 3.7. Shoreline admits that the stated purpose of the IOA, as set forth in Section 1,
11 is to “provide the citizens of the entire City and the ratepayers served by the District with
12 an efficient, high quality and well maintained sanitary sewerage wastewater system at a
13 reasonable cost and to provide an orderly and predictable transition of the wastewater
14 utility from District to City ownership.” Therefore, Shoreline denies that the IOA is “a
15 forbearance agreement.” The City further denies that the IOA itself granted the District a
16 franchise. The remaining Sections of the IOA referred to in paragraph 3.7 of the
17 Complaint speak for themselves, and no further answer is required.

19 3.8. Section 4.5 of the IOA speaks for itself, and no further response to paragraph
20 3.8 of the Complaint is required.

22 3.9. Shoreline admits that Section 4.8 of the IOA contains the District’s express
23 agreement to refrain from taking any action to protest or challenge the City of Shoreline’s
24 assumption of the District and, as alleged in paragraph 3.9 of the Complaint, that this
25 agreement operates to prevent the District’s Board of Commissioners from protesting or

1 challenging the assumption. Shoreline further admits that Section 4.8 of the IOA also
2 contains the District's express grant to the City of a limited power of attorney to execute a
3 joint petition to Superior Court for dissolution of the District pursuant to RCW 35.13A.080
4 and, as alleged in paragraph 3.9 of the Complaint, the District's express grant in Section
5 4.8 eliminated the need for any additional authorization from the District's Board of
6 Commissioners for a joint petition for dissolution of the District. The remaining
7 allegations and characterizations in paragraph 3.9, including but not limited to
8 characterizations of a "future board of commissioners," are denied.
9

10 3.10. Section 5.6 of the IOA speaks for itself, and no further response to
11 paragraph 3.10 of the Complaint is required.
12

13 3.11. Section 13 of the IOA speaks for itself, and no further response to
14 paragraph 3.11 of the Complaint is required.

15 3.12. Shoreline admits the District has paid over \$7 million to the City since
16 2002. The remaining allegations in paragraph 3.12 of the Complaint are denied.

17 3.13. In answer to paragraph 3.13, Shoreline admits that in 2012, the District
18 communicated to its ratepayers that the IOA is an agreement by the City not to assume the
19 District for 15 years, and that assumption would include a vote. This communication was
20 erroneous, as is demonstrated by other inaccuracies in it. For example, the District stated
21 in the 2012 communication to its ratepayers that it had not agreed to assumption at the end
22 of the IOA: "Has Ronald Wastewater District agreed to be assumed by the City of
23 Shoreline? No. ..." The 2012 communication referenced in paragraph 3.13 contradicted
24 Sections 1, 3.7, 3.8, and 4.8, among others, which provide for the City's future assumption
25

1 of the District. The 2012 communication's misstatements contradict a District
2 communication executed by its General Manager on December 28, 2011, which stated
3 that the IOA "essentially provided for an eventual City assumption in return for financial
4 consideration to be received in the form of annual compensation." "At the end of the 15-
5 year agreement period,... The City could then begin the agreed upon assumption process
6 to achieve ownership of RWD pursuant to the IOA and its relationship with [sic] what is
7 referred to as the 'assumption statute' RCW 35.31A."

9 13.14-13.18. Shoreline admits paragraphs 3.14, 3.15, 3.16, 3.17, 3.18, except as
10 to paragraph 3.16 Shoreline denies receiving the District's May 20th letter until a copy was
11 provided at the Council meeting of May 22nd by a member of the audience, the City
12 received its first copy addressed to a councilmember on May 23rd. As to paragraph 3.17
13 Shoreline denies that public comment was unanimously opposed to the City's filing suit
14 against the District.

16 3.19. Shoreline admits that, on June 20, 2013, the City responded to the
17 District's invitation to discuss the issues. The City's response speaks for itself.
18 Therefore, no further response to the allegations of paragraph 3.19 is required, except that
19 the City denies the allegation in paragraph 3.19 that its communication communicated any
20 "intent to accelerate assumption transition discussions."

22 3.20 – 3.23. Shoreline denies paragraphs 3.20, 3.21, 3.22 and 3.23 in their entirety.

23 4.1. Shoreline has answered the paragraphs incorporated by reference into
24 paragraph 4.1, and no further answer is required.

1 4.2. In answer to paragraph 4.2, Shoreline states that it owns and operates a
2 “system of sewerage” as that term is used and defined in RCW Chapter 35.92 and RCW
3 35.67.010. Further, Shoreline’s system of sewerage includes connections that receive
4 sanitary sewer flows during overflow events. RCW 35.92.070 speaks for itself, and
5 Shoreline denies that RCW 35.92.070 applies to an assumption by Shoreline of the
6 District pursuant to Chapter 35.13A RCW as provided for by the IOA. The remaining
7 allegations in paragraph 4.2, including but not limited to the allegations that “the City
8 does not own or operate a sewer system,” are denied.
9

10 4.3. Shoreline admits that there are three exceptions to the requirement for an
11 election set for the in RCW 35.92.070, which speak for themselves. To the extent that
12 RCW 35.92.070 applies to an assumption of the District by Shoreline as provided for by
13 the IOA, Shoreline denies that none of RCW 35.92.070’s exceptions apply to such an
14 assumption.
15

16 4.5 – 4.6. In answer to paragraph 4.5 and 4.6, RCW 7.24.020 and .030 speak for
17 themselves and these paragraphs require no further answer.
18

19 4.7. Shoreline admits that the District is a “person” as that term is used in RCW
20 7.24.020 and defined in RCW 7.24.130, and that the District is requesting a judgment as
21 alleged in paragraph 4.7. Shoreline denies that the District is entitled to the judgment that
22 the District requests. The requirement for an election outlined in RCW 35.92.070 does
23 not apply to an assumption of a water-sewer district as authorized in Chapter 35.13A and
24 as provided for in the IOA, and even if the requirement for an election did apply to
25 assumptions under Chapter 35.13A, an election is not required for Shoreline’s assumption

1 of the District as provided for by the IOA because assumption will provide for the
2 addition, betterment or extension of Shoreline's existing system of sewerage and is
3 therefore exempt from any requirement for a public vote pursuant to RCW
4 35.92.070(1)(a) and .070(5).
5

6 5.1. Shoreline has answered paragraphs incorporated into paragraph 5.1 and no
7 further answer is required.

8 5.2 – 5.7. Shoreline denies paragraph 5.2, 5.3, 5.4, 5.5, 5.6, and 5.7.

9 5.8 – 5.9. Shoreline has answered paragraphs 5.8 and 5.9 in Shoreline's answer
10 to paragraphs 4.5 and 4.6 of the complaint, which answers are hereby re-stated and
11 incorporated here by reference.
12

13 5.10. In answer to paragraph 5.10 Shoreline admits the District is a "party" as
14 that term is used in RCW 7.24.020 and defined in RCWA 7.24.130, and admits that the
15 District is requested a declaratory judgment as alleged in paragraph 5.10 of the Complaint.
16 Shoreline denies that the District is entitled to the judgment the District requests.
17

18 **II. AFFIRMATIVE DEFENSES**

19 **BY WAY OF FURTHER ANSWER and as AFFIRMATIVE DEFENSES,**
20 Defendant alleges as follows:
21

22 1. Plaintiffs fail to state a cause of action against Shoreline upon which relief can
23 be granted, for reasons including but not limited to the absence of a justiciable
24 controversy.
25

2. Plaintiffs' claims challenging the validity and enforceability of terms of the Interlocal Operating Agreement, as described in the Second Claim for Declaratory Relief of the Complaint, and any claims seeking a declaratory judgment as to the rights of the parties under these provisions, are subject to binding arbitration under Section 11 of the IOA.

3. The claims of plaintiffs are barred by the doctrine of laches.

4. The claims of plaintiffs are barred by the doctrines of equitable and/or promissory estoppel.

5. The claims of plaintiffs are barred by the statute of limitations.

6. Plaintiffs lack standing to bring the Complaint.

7. The Court lacks jurisdiction to issue a declaratory judgment, because there is no justiciable controversy.

III. COUNTER CLAIMS

A. FIRST CLAIM: DECLARATORY JUDGMENT FINDING BREACH OF CONTRACT AND ANTICIPATORY BREACH OF CONTRACT

Defendant City of Shoreline alleges the following counterclaim for breach of contract against Plaintiff RONALD WASTEWATER DISTRICT.

1. Shoreline incorporates herein by reference its Answer to paragraphs 1.1, 1.2, 1.3, 2.1 and 2.2, and 3.5 of the Complaint.

2. According to the 2010 Ronald Wastewater District's Comprehensive Plan and the December 28, 2011 communication of the District quoted in paragraph 3.13 of the Answer section of this pleading, the District's utility service area includes the portion of unincorporated Snohomish County, bounded by Puget Sound, the City of

1 Shoreline and the Town of Woodway. This area of unincorporated Snohomish County
2 is commonly known as "Point Wells."

3 3. Point Wells is identified in the City of Shoreline's Comprehensive Plan as a
4 "Future Service and Annexation Area," and a subarea plan has been adopted by
5 Shoreline for Point Wells. The subarea plan will take effect upon the future annexation
6 of Point Wells to the City of Shoreline.
7

8 4. The IOA is in effect until October 22, 2017. Section 1 and 4.8 of the
9 Agreement provide that the City may assume the District at the end of the Agreement's
10 term. Section 3.8.2 provides that, upon assumption, Shoreline will assume all District
11 assets, personal, real and intangible property, employees, and any District debt.
12

13 5. In addition to the foregoing agreements, Section 4.5 of the IOA obligates the
14 District to annex areas it serves into the District's corporate boundaries, including those
15 areas outside of Shoreline's corporate boundaries.

16 6. On May 14, 2013, the District held a Board of Commissioners meeting.
17 One of the items on the May 14 agenda was a draft Memorandum of Understanding
18 ("MOU"), dated May 6, 2013, concerning the Town of Woodway's assumption of the
19 District's assets and service area within Woodway and the Woodway's Municipal Urban
20 Growth Area.

21 7. The Town of Woodway's Comprehensive Plan designates Point Wells as
22 part of Woodway's Municipal Urban Growth Area, even though Point Wells is
23 designated in the Shoreline Comprehensive Plan as part of Shoreline's future annexation
24 area.
25

1
2 8. The draft Memorandum of Understanding between the Town of Woodway
3 and the District reflects the general terms anticipated to be included in a final agreement,
4 which included

- 5 • Transfer of the District's assets within Woodway and its Municipal
6 Urban Growth Area ("MUGA") to Woodway, and Woodway's payment
7 for such assets;
- 8 • Transfer of the District's service area currently within Woodway's
9 MUGA to Woodway.

10 9. Shoreline presented a letter to the District Board from Shoreline City
11 Manager Julie Underwood at the District Board's May 14th meeting. The letter puts the
12 District on notice that a potential transfer of the District service area or assets in the
13 Point Wells area would be in direct conflict with Section 4.5 the Agreement, and
14 demands that the District cease further consideration of these transfers. No final action
15 with regard to the MOU was taken by the Board at the on May 14th; however, the Board
16 continued its decision on the MOU until the Board received more information on
17 valuation of the District's assets including those in Point Wells.

18 10. Transfer of any portion of the District's facilities or service area to an entity
19 other than Shoreline within Shoreline's Point Wells Future Service Annexation Area is a
20 material breach of Sections 3.8.2 and 4.7 of the IOA. The District agreed in those
21 sections of the IOA to annex areas served (e.g., Point Wells) into the District's corporate
22 boundaries, and then transfer these additional areas together with the District's service
23 area and assets to Shoreline upon assumption under RCW 35.13A.050 at the termination
24 of the IOA in 2017 or, if the IOA is extended by Shoreline, in 2022.

25 11. Transfer of the District's service area and assets in the Point Wells area, as
proposed in the MOU, would materially harm Shoreline, because following Shoreline's

1 annexation of Point Wells, that part of the City of Shoreline would be served by a
2 different sewer provider instead of a single City of Shoreline sewer utility, defeating the
3 objective of a single utility provider contemplated in the Agreement. Moreover,
4 Shoreline could not achieve this objective in the future without Woodway's agreement
5 instead of unilaterally assuming the assets at no cost from the District as contemplated
6 in the IOA under Chapter 35.13A RCW.

7
8 12. The District sent a letter to the City date June 12, 2013 denying that its
9 intended transfer of service area or assets in the Point Wells area were in violation of the
10 IOA.

11 13. If the Complaint presents a real, immediate and substantial controversy such
12 that it is justiciable, then necessarily so, too, does the Memorandum of Understanding's
13 recital that "[t]he Town of Woodway (the "Town") has reached an agreement in
14 principal with Ronald Wastewater District (the "District") concerning the provision of
15 sewer services within the Town of Woodway and the Town's Municipal Urban Growth
16 Area ("MUGA")," because the above-described "agreement in principal" constitutes a
17 material breach of Sections 3.8.2 and 4.7 of the IOA.

18 14. As part of the consideration for the IOA, the District agreed in Section 4.8 to
19 cooperate with Assumption and Dissolution of the District in subsection 4.8, and
20 specifically to take no action to protest or challenge the assumption.

21
22 15. Shoreline realleges and incorporates paragraph 3.13 of the Answer portion of
23 this pleading. The District's public statements that the District has not agreed to Shoreline
24 assumption of the District at the end of the IOA term constitute an action protesting its
25 assumption by the City, in material breach of Section 4.8 of the IOA.

1 16. The District's allegation in paragraph 3.22 of the Complaint, that paragraph
2 4.8 of the IOA requiring the District's cooperation with assumption and dissolution is
3 unconstitutional and unenforceable, constitutes an action challenging the City's
4 assumption of the District in material breach of the IOA.
5

6 17. Each of the requests for relief set forth in Section VI of the Complaint
7 constitutes a protest or challenge to Shoreline's assumption of the District, in material
8 breach of Section 4.8 of the IOA.

9 18. RCW 7.24.020 provides a person interested in a contract with a cause of
10 action to seek judgment declaring the party's rights under the contract.
11

12 19. RCW 7.24.030 provides that a judicial declaration of rights may occur prior to
13 breach.

14 20. The City of Shoreline is a "person" "interested" in the IOA, as "interested"
15 and "person" are used and defined in RCW 7.24.020 and .130.

16 21. Damages are not an adequate remedy for the District's breach of its obligation
17 to annex all portions of its service area and to then convey all of its assets to the City upon
18 assumption at the conclusion of the IOA's term.

19 22. Section 15 of the IOA provides that the prevailing party shall be awarded
20 reasonable attorney's fees for any action arising out of or related to IOA.
21

22 B. **SECOND COUNTERCLAIM: DECLARATORY JUDGMENT FINDING**
23 **SHORELINE FORBEARANCE OF ASSUMPTION INVALID AND**
 UNENFORCEABLE.

24 1. Shoreline incorporates herein by reference its Answers above to paragraphs
25 1.1, 1.2, 1.3, 2.1 and 2.2 and 3.5 of the Complaint.

2. If the District's agreement not to protest the City's assumption and to provide an orderly and predictable transition of the wastewater utility from District to the City is an invalid and unenforceable restriction on the governmental powers of future District Board of Commissioners to protest or challenge the City's assumption of the District as the District alleges in the Complaint, then Shoreline's agreement in Section 3.2 of the IOA to forbear commencement of assumption of the District until the end of the IOA in 2017 or 2022 is also an invalid and unenforceable restriction on the right of the current or future Shoreline City Councils to exercise their governmental powers to assume the District under Chapter 35.13A.

3. If the relief requested by the Plaintiff is granted in regard to Section 4.8 of the IOA, a judgment should also be entered declaring that Shoreline's agreement in Section 3.2, to forbear commencement of assumption of the District until the end of the IOA in 2017 or 2022, is also an invalid and unenforceable restriction on the right of the current or future Shoreline City Councils to exercise their governmental powers to assume the District under Chapter 35.13A RCW.

IV. RELIEF REQUESTED

WHEREFORE, having answered the Complaint and asserted its affirmative defenses and counterclaims against the Plaintiffs, the City prays for relief against Plaintiffs as follows:

1. For an Order requiring the parties to arbitrate the causes of action alleged in the Second Claim for Declaratory Relief in the Complaint and in the Counterclaims herein pursuant to the arbitration clause of Section 11 of the IOA;

1 2. For judgment in favor of the City and against the District pursuant to
2 Chapter 7.24 RCW, declaring that:

3 2.1. Sections 3.2, 4.8 and all other provisions of the IOA are valid,
4 constitutional, legally binding on the parties and enforceable, and do not
5 violate the free speech or other constitutional rights of the District;
6

7 2.2. A public vote is not required under RCW 35.92.070 before the City of
8 Shoreline may assume the Ronald Wastewater District pursuant to Chapter
9 35.13A RCW;

10 2.3. The District's agreement in principle and any future agreement with
11 the Town of Woodway, to transfer District service area and assets within
12 the Point Wells area of unincorporated Snohomish County to the Town of
13 Woodway constitutes a material breach of the IOA;
14

15 2.4. District communications to its ratepayers and the public as detailed in
16 the Complaint and this Answer, and the relief requested in the Complaint,
17 constitute material breaches of Section 4.8 of the IOA.

18 3. An order for specific performance, temporary and/or preliminary injunctive
19 relief, and/or additional relief pursuant to RCW 7.24.080 and/or RCW 7.24.190,
20 prohibiting Defendants from transferring any portion of the District's service area
21 and/or assets pending resolution of this case;
22

23 4. An order of specific performance, temporary and/or permanent injunctive relief,
24 and/or additional relief pursuant to RCW 7.24.190, barring any future actions or
25 communications by the District in breach the District's duties of cooperation with

1 Shoreline's assumption and dissolution of the District set forth in Section 4.8 of the
2 IOA.

3
4 5. For dismissal with prejudice of the Plaintiffs' Complaint against Defendant
5 City of Shoreline.

6
7 6. For an award to the City of Shoreline for its reasonable costs and attorney's
8 fees as allowed under Section 15 of the IOA and as otherwise provided by law;
9 and

10 10. For such other relief as the Court deems just and equitable.

11 **CITY OF SHORELINE**

12
13 s/Ian Sievers
14 Ian Sievers, WSBA No. 6723
15 Attorney for Defendant City of Shoreline
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DECLARATION OF SERVICE

I, Darcy Greenleaf, declare and state:

I am a citizen of the State of Washington, over the age of 18 years, and not a party to this action. On the 13th day of August, 2013, I caused to be served a true and correct copy of the foregoing Answer and Counterclaims of Defendant on the following counsel of record using the method of service indicated below:

Thomas M. Fitzpatrick
Philip A. Talmadge
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188

- ☒ By United States Mail
- ☐ By Hand Delivery
- ☐ By Legal Messenger
- ☒ By Electronic Mail
- ☐ By Federal Express/Express Mail

Joseph P. Bennett
Matthew R. Hendricks
Hendricks-Bennett
402 5th Avenue South
Edmonds, WA 98020

Attorneys for Plaintiff

I make this declaration subject to penalty of perjury under the laws of the State of Washington.

Dated this 13th day of August 2013, at Shoreline, Washington.

s/ Darcy Greenleaf
Darcy Greenleaf